

9 FAM PART IV Appendix O, 200 ELIGIBILITY FOR ADMISSION TO THE UNITED STATES AS A REFUGEE

(TL:VISA-280; 05-15-2001)

9 FAM 201 REFUGEE DEFINITION

(TL:VISA-142; 4-22-96)

Under the definition in INA 101(a)(42), a refugee is:

“(A) any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion, or

“(B) in such other circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person’s nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term ‘refugee’ does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.”

9 FAM 202 AUTHORITY FOR DETERMINING ELIGIBILITY

(TL:VISA-142; 4-22-96)

Legal authority for determining who is admissible to the United States as a refugee is vested in the Attorney General. This authority has been delegated to the Immigration and Naturalization Service (INS).

9 FAM 202.1 Admission Discretionary

(TL:VISA-142; 4-22-96)

The granting of admission as a refugee is discretionary. The fact that an individual is a member of a group designated as being of special humanitarian concern, or has been authorized for processing even though not a member of such group, does not of itself entitle the alien to admission to the United States as a refugee. Meeting one of these requirements simply begins the process of consideration of eligibility. (INA 207(c)(1))

9 FAM 202.2 Bona Fide Refugees and U.S. Criteria

(TL:VISA-280; 05-15-2001)

Consular officers must bear in mind that most bona fide refugees do not fit within the criteria of the U.S. resettlement program. Thus, although a person must be a refugee in order to apply to resettle in the United States, many who do not meet U.S. resettlement criteria are nonetheless refugees and, as such, should be referred to UNHCR. [See 9 FAM PART IV Appendix O, 103.]

9 FAM 202.3 Refugees of Special Concern

(TL:VISA-142; 4-22-96)

Each year, in consultation with the Congress, the President designates certain refugee groups as being of special concern to the United States. This information is provided to the field in the annual processing guidelines' cables at the beginning of the year.

9 FAM 202.4 Processing Priorities

(TL:VISA-142; 4-22-96)

Cases of refugees who are members of groups designated as being of special concern, and are within the processing priorities that are being considered, may be processed at refugee processing posts for admission to the United States as refugees without special authorization from the Department. Other refugees may be considered for admission as such only after the post receives a special authorization from the Department to process the cases of these individuals. Posts should direct such requests to the Department (ATTN: PRM/A/O). This request should provide information about the individual's claim to refugee status and explain why the post is requesting that this person be considered within the U.S. program.

9 FAM 203 RELATIVES ACCOMPANYING OR FOLLOWING TO JOIN

(TL:VISA-280; 05-15-2001)

Derivative refugee status is accorded the spouse and children of persons admitted as refugees whether the spouse or child accompanies the principal applicant or follows to join. They need not meet the standards for refugee status independently. If the spouse or child(ren) follow to join a refugee, the procedure will be initiated by receipt of an approved Form I-730 or a VISAS 93 cable; spouses and children following to join asylees will be identified by an approved Form I-730 or a VISAS 92 cable [see *9 FAM PART IV* Appendix O, 1700]. The terms “spouse” and “child” (of refugees) are as de-fined in the INA and implementing regulations.

9 FAM 204 REFUGEES WHO ALSO QUALIFY FOR IMMIGRANT VISAS

(TL:VISA-142; 4-22-96)

Persons who may be refugees but who also qualify for immediate relative status must be processed as immigrants. Refugees who are preference status beneficiaries are not required to enter the United States as immigrants if refugee admission is possible, but consular officers should advise them of the availability of immigrant procedures.